
(1994) 10 AHC CK 0032
In the Allahabad High Court
Case No : Writ Petition No. 5005 of 1988

Abid Ali and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 05-10-1994

Acts Referred:

Citation : (1994) 10 AHC CK 0032

Hon'ble Judges : S.H.A.Raza, J and K.Narayan, J

Final Decision : Dismissed

Judgement

1. Petitioners Sarvasbri Abid Ali, Abdul Latif, and Jalauddin by means of this writ petition, have prayed for quashing the list of the certain castes amongst Muslims, which have been declared as backward castes or classes and accord reservation to the entire Muslim community as socially and economically backward class, as Muslims as a whole belong to weaker classes due to poverty. ,

2. Mr. Abdul Latif Hamidi, who appeared in person, vehemently argued that Islam forbids caste system, and in this regard he cited various Surahs of the Holy Quran and the last command of the Prophet A. S. by declaring that all discrimination between men and women had been abolished, and only those who were the believers and righteous would be dearer to Almighty. It was submitted that as Islam has established a classless society and which does not believe in caste system, reservation to certain Muslim castes or classes as backward caste or class is against the tenet of Islam. He urged that Muslim community as a whole which is socially, educationally and economically backward, deserves to be declared as socially and educationally backward class.

3. As far as scriptures of Holy Quran and the saying of Prophet A. S. is concerned, it can be said, without reluctance, that Islam tried to establish a classless society, without any discrimination on the ground of sex, colour, caste or creed. But, in India it cannot be denied that Muslims in this country have also adopted caste system, as a result of which several communities, which are engaged in different profession, are bracketed as backward communities.

4. In the case of Indra Sawhney and others etc., etc. v. Union of India and others etc, etc. JT 1992(6) SC 273, Hon. Mr. Justice S. Ratnavael Pandian while concurring with the majority opinion indicated in para86, 87 and 88 of the report:

"It is said that the caste system is unknown to other communities such as Muslims, Christians, Sikhs, Jews, Parsis, Jain etc. in whose respective religion, the caste system is not recognized and permitted. But, in practice, it cannot be irrefutably asserted that Islam Christianity, Sikhism are all completely immune from casteism".

"There are marked distinctions in one form or another among various sections of the Muslim community especially among converts to Islam though Islam does not recognize such kind of divisions among Muslims and professes only common brotherhood."

"There are various sects or separate group of people in Muslim communities being identified by their occupation as such Pinjara in Gujrat Dudekhula (cotton beaters) in Andhra Pradesh Labbais, Row that and Marakayat in Tamil Nadu."

5. It was further indicated by Hon. Mr. Justice S. Ratnavael Pandian in para98 of the report:

"Though in India, caste evil originated from Hindu religion that evil has taken its root so deep in the social structure of all the Indian communities and spread its tentacles far and wide thereby leaving no community from being influenced by the caste factor. In other words, it cannot be authoritatively said that some of the communities belonging to any particular religion are absolutely free from casteism or at least from its shadow. The only difference being that the rigour of caste varies from religion to religion and from region to region. Of course, in some of the communities, the influence of the caste factor may be minimal. So far as the Hindu society is concerned it is most distressing to note that it received sanction from the Hindu religion itself and perpetuated all through."

P. B. Sawant concurring with the majority view indicated in para47 5 of the report :

"As far as Islam is concerned, Islam also does not recognize castes or caste system. However, among the Muslim, in fact there are Ashrafs and Ajlafs i. e. high born and low born. The Census Report of 1901 of the Province of Bengal records the following facts regarding the Muslims of the then Province of Bengal;

"The conventional division of the Mohammedans into four tribes Sheikh, Saiyad, Moghul and Pathan has very little application to this Province (Bengal). The Mohammedans themselves recognize two main social divisions, (1) Ashraf or Sharaf and (2) Ajlaf, Ashraf means "noble" and includes all undoubted descendants of foreigners and converts from high caste Hindus. All other Mohamedans including the occupational groups and all converts of lower ranks are known by the contemptuous terms "Ajlaf, "wretches" or mean people ; they are also called Kamina or Itar, "base" or Fasil, a corruption of Rizal, "worthless".

In some places a third class, called Arzal or "lowest of all", is added. With them no other Mahommedan would associate and they are forbidden to enter the mosque to use the public burial ground. With these groups, there (sic) castes with social precedence of exactly the same nature, as one finds among the Hindus.

(1) Ashraf or better class Mohammedans :

(i) Saiyad, (ii) Sheikhs, (iii) Pathans, (iv) Moghul, (v) Malik (vi) Mirza.

(2) Ajlaf or lower class Mohammedans :

(i) Cultivating Sheikhs., and other who were originally Hindus but why do not belong to any functional group and have not gained admittance to the Ashraf Community e. g. Pirali and Thakrai, (ii) Darzi, Jolaha, Fakir and Rangrez, (iii) Barhi, Bhathara, Chik Churihar, Dai, Dhawa, Dhunia, Gaddi, Kala, Kasai, Kula, Kunjara, Latheri, Mahifarosh, Mallah, Naliya, Nikari (iv) Adbad, Bako Bediya. Bhatr Chamba, Dafali, Dhobi, Hajjam, Mocho, Nagarchi, Nat, Panwaria, Madaria and Tuntia.

(3) Arzal or degraded class.

Bhanar, Halalkhor, Hirja, Kashi, Lalbegi, Maagta, Mehtar,

The Census Superintendent mentions another feature of the Muslim social system, namely the prevalence of the "Panchayat system". He states :

"The authority of the Panchayat extends to social as well as trade matters and marriage with people of other communities is one of the offences of which the governing body takes cognizance. The result is that these groups are often as strictly endogamous as Hindu caste. The prohibition on intermarriage extends to higher as well as to lower castes, and a Dhuma, for example may marry no one but a Dhuma. If this rule is transgressed the offender is at once hauled up before the panchayat and ejected ignominiously from his community. A member of one such group cannot ordinarily, gain admission to another, and he remains the designation of the community in which he was born even if he abandons its distinctive occupation and takes to other means of livelihood.....thousands of Jolahas ate butchers, yet they are still known as Jolahas."

6. The lower class or caste i. e. Ajlaf or Arzal is not only relevant in Bengal alone. Such castes or classes are found amongst Muslim community throughout this country and for that reason, some of the castes or classes amongst Muslim, which ! are socially and educationally backward, have been mentioned in Mandal Commission Report as well as in the list of backward classes, which have been issued by the State.

7. Hon"ble Mr. Justice P. B. Sawant in para 478 of the report, further observed:

"The division of the society even among the other religious groups in this country between the high and low caste is only to be expected. Almost all followers of the

nonHindu religions except those of the Zorastrianism, are converts from Hindu religion, and in the new religion they carried with them their castes as well. It is unnatural to expect that the social prejudices and biases, and the notions and feelings of superiority and inferiority, nurtured for centuries together, would disappear by a mere change of religion."

8. Hon"ble Mr. Justice B. P. Jeevan Reddy speaking for himself and on behalf of Hon"ble Mr. Justice M. H. Kenia, CJI, Hon"ble Mr. Justice M. N. Venkatachalia and Hon"ble Mr. Justice A. M. Ahmadi, indicated in Para798 of the report :

"The concept of "caste" in this behalf is not confined to castes among Hindus. It extends to castes, wherever they obtain as a fact, irrespective of religious sanction for such practice. Having exhausted the castes or simultaneously with it, the authority may take up for consideration other occupational groups, communities and classes. For example, it may take up the Muslim community (after excluding those sanctions, castes and groups, if any, who have already been considered) and find out whether it can be characterised as a backward class in that State or region, as the case may be. The approach may differ from State to State since the conditions in each State may differ."

It was further indicated in para 799 of the report:

"It is for the authority (appointed to identify) to adopt such approach and procedure as it thinks appropriate, and so long as the approach adopted by it is fair and adequate, the Court has no say in the matter."

9. In view of the aforesaid observation of Hon"ble Supreme Court in the case of Indra Sawhney and others (supra), it is for the authority (appointed to identify the caste), to identify the same. Mandal Commission as well as the Authority appointed to identify the caste, after making survey in the entire length and width of the country, has identified certain castes, and it also included certain castes or classes amongst Muslim as socially and educationally backward castes. The procedure, which they have adopted in identifying such castes as socially and educationally backward classes, cannot be subjected to judicial scrutiny till it is found that it is not fair and proper. No foundation has been laid in the present writ petition, to indicate that the procedure which the authorities appointed to identify the castes, adopted was not fair or adequate. There may be other castes amongst Muslims, which may be said to be educationally or economically backward castes or classes which might have not been included in the list, but it is not for the Court to identify them. It is for the authority to decide the same. It is not advisable for this Court to lay down any such procedure or method. Such questions fall within the domain of the authority appointed to identify the castes, which can adopt such method or procedure as it thinks fit and convenient and so long its survey covers the entire populace, no objection can be taken to it. It has been indicated in para 880 (3) (b) of the report that:

"Identification of the backward classes can certainly be done with reference to castes among, and along with, other occupational groups, classes and sections of

people. One can start the process either with the occupational groups or with castes or with some other groups. Thus, one can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria. If it does what emerges as a "backward" class of citizens" within the meaning of and for the purpose of Article 16(4), Similar process can be adopted in the case of other occupational groups, communities and classes, so as to cover the entire populace. The central idea and over all objective should be to consider all available groups, sections and classes in society. Since, caste represents an existing, identifiable social group/class encompassing an overwhelming majority of the country's population, one can well begin with it and then to go to other groups, section and classes."

10. It may be asserted that Muslim community as a whole is educationally and economically backward but it is beyond the jurisdiction of this Court to declare the same. In the case of Indra Sawhney and others etc. etc. (supra) in para 798 of the report it was indicated :

"For example, in a particular State, Muslim community as a whole may be found socially backward, (As a matter of fact, they are so treated in the State of Karnataka as well as in the State of Kerala by their respective State Government)."

11. But, such identification varies from State to State and region to region. It may be that in Northern belt of this Country there are various classes amongst Muslims, who may be termed as forward classes, like Saiyad, Sheikh, Mughal and Pathan, who carry their birth mark with pride in comparison to those who due to their profession and occupation are bracketed as low born or degraded.

12. Argument of the petitioner that Muslims are economically backward and the criterion for the reservation should be economic backwardness instead of social and educational backwardness, is misconceived for the simple reason that a backward class of citizen cannot be identified only and exclusively with reference to economic criteria, although it is permissible for the Government or the other Authority to identify the backward class of citizen on the basis of occupation and income without reference to the caste, if it is so advised.

13. Only because a class or group of persons which believes a particular religion like Islam, cannot be said to be a socially or educationally backward class as a whole because such a reservation, on the basis of religion, would be hit by Articles 15 (1) and 16 (2) of the Constitution of India, as it exists today. Reservation is permissible only under Articles 15 (4) and 16 (4) of the Constitution of India, which provides reservation to a particular class or classes who are socially and educationally backward class of citizen. It may be that in a particular region, Muslims as a whole are backward, but such a class is to be identified by the State or the Authority authorised to identify such class. This Court cannot declare Muslims as a whole as backward class of citizen until and

unless they are so identified by the State.

14. In the Office Memorandum dated 25th September, 1991, which was challenged before Hon"ble Supreme Court in the case of Indra Sawheny and others etc., etc. (supra), it had also provided for the reservation of 10% of posts in favour of the other economically backward section of the people who were not covered by any of the existing scheme of the reservation. But, in para87 of the report, Supreme Court observed :

"This classification among a category outside clause (4) of Article 16 is not and cannot be related to clause (4) of Article. 16. If at all, it is relatable to clause (1). Even so, we find it difficult to sustain. Reservation of 10% of the vacancies among open competition candidates on the basis of income/propertyholding means exclusion of those above the demarcating line from those 10% seats. The question is whether this is constitutionally permissible ? We think not. It may not be permissible to debar a citizen from being considered for appointment to an office under the State solely on the basis of his income or propertyholding. Since the employment under the State is really conceived to serve the people (that it may also be a source of livelihood is secondary) no such bar can be created. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Article 16. On this ground alone, the said clause in the office memorandum dated 2551991 fails and is accordingly declared as such".

15. In view of the aforesaid observation of Hon"ble Supreme Court, on the basis of economic criteria alone, the reservation cannot be given until and unless that class of citizen is socially and educationally backward, and has been identified as such. This Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, in the absence of any foundation laid down in the writ petition, cannot invalidate the list of the backward classes among the Muslims, which has been identified by the authority appointed to identify the same, may be on the basis of caste. This Court also cannot declare the entire Muslim community as a backward class for purposes of giving reservation to Muslims. The Muslim community as a whole in only a particular region or State, on the basis of social or educational backwardness or occupation etc., can be declared as a backward class. It is not for the court but the State or the Authority to identify such backward classes in any region or the State.

16. In view of what has been indicated hereinabove, writ petition is devoid of merit. It is accordingly dismissed.